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Filed : August 12, 2003

### REMARKS

Claims 1-54 were pending in the application. By this paper, Applicant amended Claims 1, 9 and 28, canceled Claims 23-27 and 50-54 without prejudice, and added new Claims 55-65.

5 Accordingly, Claims 1-22, 28-49 and 55-65 are presented for examination herein.

#### *§103 Rejections*

1. Per page 2 of the Office Action, Claims 1-13, 15-22, and 28-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (U.S. Patent No. 6,615,039; hereinafter  
10 “Eldering”) in view of Plotnick, et al. (U.S. Patent Publication No. 2002/0178447; hereinafter “Plotnick”). In response hereto, Applicant provides the following remarks.

**Claim 1** - By this paper Applicant has amended Claim 1 to include limitations relating to, in response to a detection of the indicator, generating a list of individual ones of the plurality of  
15 user terminals currently receiving the programming content. Support for this amendment is replete throughout Applicant’s specification as filed, including at *inter alia*, page 13, lines 24-31 (the final paragraph of page 13). Applicant respectfully submits that neither Eldering nor Plotnick teach or suggest such limitations.

The Examiner states at page 2 of the Office Action that “*Plotnick in 0105, 3-7 discloses a*  
20 *system that characterizes the current viewer based on current viewing information and selects the appropriate advertising for the current viewer based on the characterization, also in 0089, 1-4 Plotnick discloses cue messages that indicate an advertisement opportunity (avail) decoded by the cue message decoder 404 which reads on ‘in response to a detection of the indicator, determining the audience currently viewing the programming content’.*”

25 Assuming *arguendo* the Examiner’s statement to be true, Applicant submits that the characterization disclosed in Plotnick does not comprise generating a list of individual ones of the plurality of user terminals currently receiving the programming content as now recited in Claim 1. Specifically, at paragraphs 0105 - 0112, Plotnick discloses a system which characterizes an individual viewer by compiling one or more user profiles. Information regarding current  
30 viewing habits (or current viewing information) is used to compile various user profiles, Plotnick states at paragraph 0110:

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5       *"The events 1034, 1038 from the event queue 1036 along with associated program metadata 1040 from the metadata storage 1028 are used to create/update 1042 subscriber profiles 1044... A currently stored subscriber profile may be updated if it is determined that current viewing habits are similar to a previous profile. Alternatively, a new profile may be created if it is determined that the current viewing habits are not similar to any of the currently stored profiles."*

10       As noted in paragraph 0109, the events 1034 and 1038 comprise events based on viewer interaction (including channel changes, volume changes, and utilization of the VCR-like controls of the PVR) and internal events (i.e., events that are generated by the STB PVR, such as end of program, change of day, or change of day part) respectively. *"When an ad insertion opportunity arises, the STB PVR determines whether the current session profile matches any of the historical*  
15 *profiles in the profile database 1046. If a match exists, the match will be used for selecting an appropriate ad. Otherwise, the STB PVR uses the current session profile to select an appropriate ad."* (paragraph 0112).

20       In other words, the information collected regarding a viewer's interaction with programming content is compiled into a user profile (either a new or a historical profile), and when an advertisement opportunity arises, the system determines whether to use the new profile or a historical profile to match to an advertisement.

25       Therefore, Plotnick discloses collecting information regarding the viewer's interaction with content into a user profile and utilizing the profile in selecting an advertisement. Plotnick does not teach or suggest in any way that Applicant can see generating a list of individual ones of the plurality of user terminals currently receiving the programming content in response to a detection of the indicator.

30       The Examiner further states *"Eldering discloses a method of transmitting first presentation to the first subgroup and second presentation to the second subgroup which reads on 'providing to the at least one group, the at least one programming segment in lieu of the programming content during the event'"* (see column 13, lines 62-64 of Eldering). Applicant respectfully disagrees and traverses.

Applicant submits that Eldering at column 13, lines 62-64 discloses a method of simultaneously transmitting different targeted advertisements within programming to different

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subgroups (e.g., transmitting a first presentation to a first subgroup and a second presentation to a second subgroup). Eldering states at column 7, lines 20-26:

5       *“One feature of the system is the ability to take  $n$  program streams and  $m$  advertisements (also referred as ads) and create  $p$  presentation streams with  $p$  being larger than  $n$ . This represents the fact that the initial program streams have been used in conjunction with the multicast subgroups to create presentation streams with ads that are specifically directed at subgroups.”*

10       In other words, in the Eldering disclosure, program content is spliced with a plurality of available advertisements to create a plurality of presentation streams. Therefore, Eldering does not teach or suggest providing, to the at least one group, the at least one programming segment in lieu of the programming content during the event but rather discloses providing the programming content (spliced with advertisements).

15       Therefore Applicant submits that Claim 1 as amended herein distinguishes over the art of record including Eldering and Plotnick, and thus is in condition for allowance.

20       **Claim 9** - By this paper, Applicant has amended Claim 9 to include limitations relating to *inter alia* generating, subsequent to identifying one or more groups of user terminals within the set of user terminals currently receiving the program stream, one or more data streams containing one or more alternate programming segments for substituting the scheduled programming segment. Applicant submits that neither Eldering nor Plotnick teach or suggest such limitations.

25       Assuming *arguendo* that the Eldering teaching of assigning a subgroup address enables Eldering to identify one or more users currently receiving the first or second presentation stream (a point which Applicant contests), Eldering still does not teach or suggest further identifying a one or more groups of user terminals within the set of user terminals currently receiving the program stream.

30       The Examiner states that “*Eldering teaches a method of forming subgroups according to subscriber characteristics which reads on ‘identifying one or more groups of users within the set’ (column 14, lines 10-12).*” Applicant respectfully disagrees and traverses. Specifically, Applicant contends that as illustrated at column 14, lines 10-12 (Claim 8, which depends from Claims 1 and 2), Eldering teaches a method of simultaneously transmitting different targeted advertisements within programming to different subgroups comprising: (i) inserting a first

advertisement stream in the program stream to create a first presentation stream and a second advertisement stream in the program stream to create a second presentation stream; (ii) simultaneously transmitting the first presentation to a first subgroup and the second presentation stream to a second subgroup; and (iii) using subgroups formed according to subscriber characteristics.

In other words, Eldering teaches forming subgroups based on subscriber characteristics, generating targeted advertisements for these subgroups, and then distributing the targeted advertisements to the subgroups as a presentation stream. Thus, one or more groups of users are identified in Eldering; however, these are *not* identified from among the set of user terminals currently receiving a programming segment, but rather are determinative of which user terminals will receive a presentation stream.

On a second aspect, the Examiner further states that in column 14, 59-67 “*Eldering discloses a method of inserting advertisements based on a relationship which reads on ‘generating one or more data streams containing one or more alternate programming segment for substituting the scheduled programming segment’*”. Applicant respectfully disagrees.

Applicant submits that Eldering at column 14, lines 59-67 discloses a method of simultaneously transmitting different targeted advertisements within programming to different subgroups comprising assigning a subgroup address to each subgroup; assigning an advertisement identifier to each of the advertisement streams; creating a relationship between the subgroup addresses and the advertising identifiers and inserting advertisements into the program stream based on the relationship.

Further, at column 7, lines 20-26 Eldering states:

*“One feature of the system is the ability to take  $n$  program streams and  $m$  advertisements (also referred as ads) and create  $p$  presentation streams with  $p$  being larger than  $n$ .”*

In other words, in the Eldering disclosure, program content is used to create a plurality of presentation streams which comprise the original program content spliced with a plurality of available advertisements. Advertisements are selected based on a relationship of the advertisement to a subgroup. The programming “segments” (e.g., advertisements) in the Eldering disclosure are incorporated directly (e.g., spliced) into the scheduled programming segment, and

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Eldering discloses providing the spliced stream (scheduled programming segment) to the viewer. Therefore, Eldering does not teach or suggest generating one or more data streams containing one or more alternate programming segments for substituting the scheduled programming segment. No substitution of program content/segments occurs in Eldering.

5 Applicant also respectfully submits that the aforementioned concept of Eldering is also illustrated in FIG. 6 thereof. FIG. 6 illustrates a sender which transmits a program stream and several advertisement segments to one or more routers associated with individual ones of a plurality of nodes. The nodes are representative of different geographic locations. (See e.g., column 1, lines 31-39.) The routers determine which advertisement segments to splice into the  
10 program stream (as disclosed in FIGS. 5 and 7). The disclosure discusses that the advertisements are selected for splicing based on characteristics of the receivers associated with the routers, so that particular receivers will receive program streams having advertisements spliced into program streams which are targeted to the characteristics of the users associated with the receiver. (See e.g., column 4, lines 36-45.) Thus, even if one assumes *arguendo* that Eldering  
15 discloses generating one or more data streams containing alternate programming segments for substituting the scheduled programming segment, Eldering does not disclose doing so subsequent to identifying one or more groups of user terminals within the set of user terminals currently receiving the program stream, as is recited in amended Claim 9 herein.

Therefore Applicant submits that Claim 9, as amended, distinguishes over the art of  
20 record including Eldering and Plotnick, and thus is in condition for allowance.

**Claim 28** - By this paper Applicant has amended Claim 28 to include limitations relating to a processing unit, responsive to a detection of the indicator, for generating a list of an audience currently receiving the programming content. Support for this amendment is replete throughout  
25 Applicant's specification as filed, including at *inter alia*, page 13, lines 24-31 (the final paragraph of page 13). Applicant submits that neither Eldering nor Plotnick teach or suggest such limitations.

The Examiner states on page 7 of the Office Action that "*Plotnick in 0105, 3-7 discloses a system that characterizes the current viewer based on current viewing information and selects  
30 the appropriate advertising for the current viewer based on the characterization, also in 0089, 1-4 Plotnick discloses cue messages that indicate an advertisement opportunity (avail) decoded by*

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*the cue message decoder 404 which reads on 'a processing unit responsive to a detection of the indicator, for determining an audience currently receiving the programming content'."*

Assuming *arguendo* the Examiner's statement to be true, Applicant submits that the characterization disclosed in Plotnick does not comprise generating a list of an audience  
5 currently receiving the programming content. Plotnick discloses, at paragraphs 0105-0112, characterization of a viewer based on current viewing information, the characterization comprising generating and/or updating one or more user profiles. Information regarding current viewing habits is used to compile various user profiles, this information is collected from events based on viewer interaction (including channel changes, volume changes, and utilization of the  
10 VCR-like controls of the PVR) and internal events (i.e., events that are generated by the STB PVR, such as end of program, change of day, or change of day part). Therefore, Plotnick discloses characterizing a user (i.e., generating a profile for a user) based on current viewing information (i.e., information regarding current viewing habits). The characterization disclosed in Plotnick regards the comparison of the user profiles with one or more advertisements.  
15 Therefore, Plotnick does not teach or suggest a processing unit, responsive to a detection of the indicator, for generating a list of an audience currently receiving the programming content.

The Examiner further states "in column 13, lines 62-64, *Eldering discloses a method of transmitting first presentation to the first subgroup and second presentation to the second subgroup which reads on 'the mechanism for providing to the at least one group, the at least one*  
20 *programming segment in lieu of the programming content during the event.'*". Applicant respectfully disagrees.

Applicant submits that in the Eldering disclosure, program content enters an apparatus and is used to create a plurality of presentation streams which comprise the original program content spliced with a plurality of available advertisements. Therefore, Eldering does not teach  
25 or suggest a mechanism for providing, to the at least one group, the at least one programming segment in lieu of the programming content during the event. Rather, the programming segments in the Eldering disclosure are incorporated into the programming content not provided in lieu of the programming content in any way that Applicant can see. Stated differently, the programming and advertising content are assembled without replacement or substitution.

30 Therefore Applicant submits that Claim 28 distinguishes over the art of record including Eldering and Plotnick, and thus is in condition for allowance.

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2. Per page 11 of the Office Action, Claims 23-27, 36-40, and 42-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering in view of Plotnick and further in view of Baxter, et al. (U.S. Patent 4,930,120; hereinafter "Baxter").

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**Claim 23** - By this paper, Applicant has cancelled Claim 23 without prejudice. Accordingly, the Examiner's rejection is moot, and the propriety thereof will not be addressed further herein.

10 **Claim 36** - Applicant respectfully traverses the Examiner's rejection, at page 13 of the Office Action, of Claim 36 as being unpatentable over Eldering in view of Plotnick.

The Examiner states "*Plotnick in 0105, 3-7 discloses a system that characterizes the current viewer based on current viewing information and selects the appropriate advertising for the current viewer based on the characterization, also in 0089, 1-4 Plotnick discloses cue messages that indicate an advertisement opportunity (avail) decoded by the cue message decoder 404 which reads on 'a processing unit responsive to the detection of the message, for identifying a set of one or more terminals which is currently receiving the programming stream, one or more groups of user terminals within the set being identified'.*" Applicant respectfully disagrees.

Applicant submits that the Plotnick disclosure at paragraphs 0105-112 indicates a system which characterizes a viewer based on current viewing information via the assembly of one or more user profiles; Plotnick does not at the above cited location, or elsewhere in its disclosure that Applicant can find, teach or suggest a processing unit responsive to the detection of the message, for identifying a set of one or more user terminals which is currently receiving the program stream. In Plotnick, information regarding current viewing habits is used to compile various user profiles, such as events based on viewer interaction (including channel changes, volume changes, and utilization of the VCR-like controls of the PVR) and internal events (i.e., events that are generated by the STB PVR, such as end of program, change of day, or change of day part). In other words, Plotnick discusses characterization of a viewer by collecting information regarding instances of the viewer's interaction with programming into one or more user profiles. When an advertisement opportunity arises, the system determines whether to use the new profile or a historical profile to match to an advertisement.

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Thus, Plotnick discloses collecting current viewing information on a user terminal for formation of a profile regarding the user terminal; however the terminal in Plotnick is not identified in any way, and even if it was, a set of terminals currently receiving the program stream is nowhere identified or compiled. Therefore, Plotnick does not disclose or suggest processing unit responsive to the detection of the message, for identifying a set of one or more user terminals which is currently receiving the program stream.

The Examiner further states “*in column 13, 48-50, Eldering discloses providing targeted advertisement to subgroups which reads on ‘a server for generating one or more data streams containing one or more alternate programming segment for substituting the scheduled programming segment’.*” Applicant respectfully disagrees.

Applicant submits that Eldering at column 13, lines 48-50 discloses method for simultaneously transmitting different targeted advertisements within programming to different subgroups in a telecommunications system. Further, at column 7, lines 20-26 Eldering states “*One feature of the system is the ability to take  $n$  program streams and  $m$  advertisements (also referred as ads) and create  $p$  presentation streams with  $p$  being larger than  $n$ .*” In other words, in the Eldering disclosure, a plurality of presentation streams are created from the splicing of original program content with a plurality of available advertisements. However, Eldering does not teach or suggest a server for generating one or more data streams containing one or more alternate programming segment for substituting the scheduled programming segment. Rather, the programming segments in the Eldering disclosure are incorporated directly into the scheduled programming segment, without substitution or replacement.

Therefore Applicant submits that Claim 36 distinguishes over the art of record including Eldering and Plotnick, and thus is in condition for allowance.

**Claim 50** - By this paper, Applicant has cancelled Claim 50 without prejudice. Accordingly, the Examiner’s rejection is moot, and the propriety thereof will not be addressed further herein.

#### *New Claims*

By this paper, Applicant has added new Claims 55-64, as follows.



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**Claim 55** - New independent Claim 55 corresponds generally to the subject matter of previous independent Claim 23, and hence no new matter has been added. Dependent claims 56-59 likewise correspond generally to previous dependent Claims 24-27.

Claim 55 recites *inter alia* deriving a list of a set of the plurality of users which are receiving the programming content during the scheduled presentation of the programming content. Applicant respectfully submits that neither Plotnick nor Eldering teach or suggest deriving such a list.

Furthermore, Claim 55 recites providing, over the allocated one or more transmission channels, the at least one advertisement data stream which contains one or more advertisements targeted at a selected group of the set of the plurality of users, in lieu of providing the advertising segment within the programming content. Applicant respectfully submits that the programming segments in the Eldering disclosure are incorporated or spliced into the programming content and are not provided in lieu of the advertising segments within the programming content.

Therefore, Applicant respectfully submits that new independent Claim 55 distinguishes over the art of record, including Eldering and Plotnick, and thus is in condition for allowance.

**Claim 60** - New independent Claim 60 corresponds generally to the subject matter of previous independent Claim 50, and hence no new matter has been added. Dependent claims 61-64 likewise correspond generally to previous dependent Claims 51-54.

Applicant notes that independent Claim 60 recites generating a list of an audience receiving the programming content during the scheduled presentation of the programming content. Applicant respectfully submits that neither Plotnick nor Eldering teach or suggest generating such list.

Furthermore, Claim 60 recites providing, over the allocated one or more transmission channels, the at least one advertisement data stream which contains one or more advertisements targeted at a selected group of the plurality of users, in lieu of providing the advertising segment within the programming content. Applicant respectfully submits that in the Eldering disclosure the programming segments are incorporated or spliced into the programming content, thus are not provided in lieu of the advertising segment within the programming content.

Therefore, Applicant respectfully submits that new independent Claim 60 distinguishes over the art of record, including Eldering and Plotnick, and thus is in condition for allowance.

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**Claim 65** - New independent Claim 65 corresponds generally to the subject matter of previous independent Claim 9, and hence no new matter has been added. Applicant notes that independent Claim 65 recites limitations relating to at least the act of generating one or more data streams containing one or more alternate programming segments being performed without reliance on any of said plurality of user terminals. Applicant respectfully submits that neither Plotnick nor Eldering teach or suggest such limitations.

*Other Remarks*

Applicant hereby specifically reserves all rights of appeal (including those under the Pre-Appeal Brief Pilot Program), as well as the right to prosecute claims of different scope in another continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

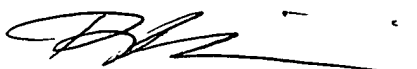
Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES

Dated: June 25, 2008

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